

CHAPTER NO. 854

SENATE BILL NO. 3074

By Ramsey, Crutchfield

Substituted for: House Bill No. 3002

By McAfee, Walker

AN ACT To regulate certain water withdrawals from streams and aquifers and to amend Tennessee Code Annotated, Title 69, Chapter 8 and Title 65, Chapter 27.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 69, Chapter 8, is amended by adding Sections 2 through 10 as a new part.

SECTION 2. This act shall be known as the "Inter-basin Water Transfer Act".

SECTION 3. The General Assembly finds that as the population and demand for water resources grow, it is prudent to engage in planning for the future and to have an explicit mechanism in place to regulate proposals for the diversion of water from one river basin to another. By removing water from rivers, such inter-basin transfers raise issues of the protection of the public health, safety, welfare and the environment as the water is no longer available for use in the original stream. The primary purpose of this act is to allow regulation on the basis of the quantity of water in river basins. Although the common law addresses some of these concerns, it relies on after-the-fact litigation rather than a modern regulatory system. As this is remedial and police power legislation, all sections of this act shall be liberally construed to effectuate its purpose.

SECTION 4. For purposes of this act, the term "basin" or "river basin" shall refer to the entire topographic extent of the following ten (10) watersheds and combinations of watersheds:

(1) The Mississippi River and all of its tributaries west of the Tennessee River Valley;

(2) The Duck River, the Elk River, and the western Tennessee River Valley;

(3) The lower Cumberland River to the downstream point of the mouth of the Caney Fork River, the Harpeth and the Stones Rivers;

(4) The tributaries of the Barren River;

(5) The upper Cumberland River, the Caney Fork, the Obey, and the Big South Fork of the Cumberland River;

(6) The lower Tennessee River in East Tennessee up to and including the Hiawassee River;

(7) The Conasauga River;

(8) The Upper Tennessee River in East Tennessee upstream of the Hiawassee, the Little Tennessee, the Clinch, and the Emory Rivers;

(9) The French Broad River and the Nolichucky River; and

(10) The Holston River and the Watauga River.

SECTION 5. (a) All persons or entities:

(1) Which have been granted powers by the State of Tennessee to acquire water, water rights and associated property by eminent domain or condemnation; or

(2) Which acquire or supply water for the use or benefit of public water supply systems as defined in Title 68, Chapter 221, Section 703, shall, when proposing a new or increased withdrawal of surface water or ground water for the purpose of transferring and/or diverting some or all of it out of a river basin either directly or through one (1) or more intermediaries, first apply for and obtain a permit from the Commissioner of Environment and Conservation, or his or her designee, prior to such diversion or transfer; provided, however, that in the case of ground water withdrawal this section shall only apply if the loss of the ground water has a significant potential to adversely affect the flow of a Tennessee surface water. For purposes of determining the amount of an existing inter-basin transfer under this section, it is the average daily amount calculated for the highest continuous 90-day period between January 1, 1997 and December 31, 1999. Provided, however, nothing whatsoever in this section shall apply to existing withdrawals by entities described above except that such persons or entities shall be subject to this section when proposing

(1) to increase the amount of water withdrawn, when some or all of the water will be transferred to a different river basin, or

(2) to locate a new intake for withdrawal, when some or all of the water will be transferred to a different river basin.

(b) All persons or entities that are issued a permit under subsection (a) shall operate the withdrawal activity in accordance with all terms and conditions of the permit.

SECTION 6. In addition to powers under all other statutes, including but not limited to the Water Quality Control Act, T.C.A. §§ 69-3-101 et seq., and the Safe Drinking Water Act, T.C.A. §§ 68-221-701 et seq., the Commissioner of Environment and Conservation, or his designee, shall have the following powers and duties under this act.

(a) To issue and to deny inter-basin transfer permits in accordance with Section 7;

(b) To issue civil penalty assessments in accordance with Section 9;

(c) To conduct inspections and investigations;

(d) To bring suit in the name of the department for any violation of the provisions of this act including seeking any remedy available under

this act as well as under any other statutory or common law remedy related to water availability and supply;

(e) To require the submission of plans, specifications, technical reports, and any other information he deems necessary to carry out the provisions of this act;

(f) To delegate any of his duties to the director of the appropriate division under his supervision; and

(g) To be the primary administrative agent in carrying out the provisions of this act.

SECTION 7. (a) The commissioner shall issue or deny any permit applied for pursuant to Section 5 in accordance with the provisions of this act and the rules adopted by the Water Quality Control Board under Section 8 and any applicable provisions of the Water Quality Control Act, T.C.A. §§ 69-3-101 et seq., and rules thereunder. Such permits shall be issued for a renewal term of five (5) years and contain necessary and appropriate conditions to accomplish the purposes of the same acts and rules.

(b) The commissioner shall, to the maximum extent feasible, combine the permit application and issuance processes for a withdrawal activity that requires permits under this act and the Water Quality Control Act.

(c) The commissioner may revoke, suspend, or modify any permit for the following reasons:

(1) Violation of any terms or conditions of the permit or of any provision of this act;

(2) Obtaining the permit by misrepresentation or failing to disclose fully all relevant facts; or

(3) A change in any condition that requires either a temporary or permanent reduction or elimination of the permitted inter-basin transfer because of reasonably likely adverse impacts to downstream users or the environment.

(d) Any person aggrieved by the denial of a permit or the imposition of a permit condition may appeal such matter to the Water Quality Control Board by filing an appeal petition with the commissioner within thirty (30) days of the issuance or denial of the permit.

SECTION 8. In addition to powers under all other statutes, including but not limited to the Water Quality Control Act, T.C.A. §§ 69-3-101 et seq., and the Safe Drinking Water Act, T.C.A. §§ 68-221-701 et seq., the Water Quality Control Board, created by T.C.A. § 69-3-104, shall have the following powers and duties under this act:

(a) To promulgate rules to be effective by October 1, 2000, to effectuate the purposes of this act including but not limited to:

(1) Defining necessary terms;

(2) Setting criteria for permit issuance and denial as well as for permit conditions, taking into account all appropriate factors including, but not limited to, existing uses downstream of a proposed withdrawal,

low flow conditions, classified uses of the stream under the Water Quality Control Act, climatic conditions, alternatives to the proposed withdrawal, the number of downstream river miles from which water will be diverted as a result of the transfer, quantity of a proposed withdrawal, and quantity and location of water returned;

(3) Establishing procedures for permit issuance, including application fees for permits under this act, categories of withdrawals for which general permits would be appropriate, requirements for public notice, including notice to potentially affected communities and water users and notice to the public of receipt of a permit application within thirty (30) days of receipt, and opportunity for public comment and public hearings.

(b) To hear appeals from assessments of civil penalty assessments; and

(c) To hear appeals from permit applicants over conditions imposed or permits denied.

SECTION 9. (a) The commissioner may assess civil penalties for any violation of this act of up to ten thousand dollars (\$10,000) per day per violation. In making such assessments, the commissioner shall consider all appropriate factors including without limitation, whether the violation was knowing or intentional, any actual harm to people or the environment resulting from the violation or activity, the potential for harm to people or the environment posed by the violation or activity.

(b) Any civil penalty shall be assessed in the following manner:

(1) The commissioner may issue an assessment against any person or entity responsible for the violation.

(2) Any person or entity against whom an assessment has been issued may secure a review of such assessment by filing with the commissioner a written petition setting forth the grounds and reasons for the objections, and asking for a hearing on the matter involved before the board. If a petition for review of the assessment is not filed within thirty (30) days after the date the assessment is served, the violator shall be deemed to have consented to the assessment and it shall become final.

(c) All fees and penalties assessed and collected under the provisions of this part shall be administered in the same manner as provided in the Environmental Protection Fund Act, T.C.A. § 68-203-101.

SECTION 10. Any exercise of the State of Tennessee's grants of power to acquire water, water rights, and associated property by eminent domain or condemnation, and for the use or benefit of public water supply, shall not be made in a manner that conflicts with the Water Quality Control Act, T.C.A. §§ 69-3-101 et seq., or this act and the regulations thereunder.

SECTION 11. Tennessee Code Annotated, Section 65-27-101, is amended by designating the existing language as subsection (a) and by adding the following sentence as subsection (b):

(b) Any exercise of the powers granted under this section is subject to and shall not conflict with the Water Quality Control Act, T.C.A. §§ 69-3-101 et seq., or this act and the regulations thereunder.

SECTION 12. The Water Quality Control Board may, from time to time after giving due notice and conducting a public hearing, determine and delineate such basins or portions of basins wherein the demands upon supply made by water users have developed or threaten to develop to such a degree as to create a water shortage and any such areas may be designated as "protected areas". The Water Quality Control Board, whenever it determines that such shortage no longer exists, shall terminate the protected status of such area and shall give public notice of such termination.

SECTION 13. (a) Prior to October 1, 2000, all persons or entities subject to Section 5(a) of this act that operate an existing inter-basin transfer shall submit flow or pumping records or other documentation that shows to the Commissioner of Environment and Conservation's satisfaction the amount of such transfer. The commissioner shall respond in writing stating whether the documentation was sufficient or specifying any deficiency that shall promptly be corrected. Any failure to comply with this section will constitute a violation of this act.

(b) All such persons or entities shall, thereafter, either submit every October 1 a statement under oath certifying that there has been no increase in the inter-basin transfer together with appropriate documentation or a timely permit application for any increased inter-basin transfer as provided in Section 5 of this act.


SECTION 14. The Department of Environment and Conservation may re-designate existing personnel to implement the provisions of this act.

SECTION 15. The Department of Environment and Conservation shall submit a report to the House Conservation and Environment Committee and the Senate Environment, Conservation and Tourism Committee relative to the implementation of this act no later than January 15, 2003. Such report shall include but not be limited to an impact statement relative to the Water Quality Control Act and the Tennessee Safe Drinking Water Act.


SECTION 16. This act shall take effect upon becoming a law, the public welfare requiring it.

PASSED: May 25, 2000


JOHN S. WILDER
SPEAKER OF THE SENATE


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 31st day of May 2000


DON SUNDQUIST, GOVERNOR